

## **REMARKS**

### **AMENDMENT OF CLAIMS**

The Examiner considers claims 4-54 pending. Applicants have amended the claims that were pending as of the previous response filed on February 7, 2005.

Applicants have amended claim 12 such that it does not depend on a cancelled claim.

Claims 15, 17, 19, 21, 38 and 54 are identified as linking claims and as such, applicants have amended the claims such that they recite "angiogenic factor, or cells capable of producing an angiogenic factor" as they did prior to Applicant's Response filed February 7, 2005.

Applicants have amended claims 23-26 to reflect the withdrawal of claims 18 and 20. As amended the claims recite "The method of any one of Claims 15-~~20~~, 17 or 19 ...."

### **ELECTION OF CLAIMS**

Applicants hereby elect, with traverse, the claims of Group IV, i.e., claims 12-14, 23-25 and 49-51, and 54 relating to the methods requiring the delivery of cells to myocardial tissues for prosecution at this time.

Applicants have withdrawn non-elected claims 4-11, 22, 26-48 and 52-53 without prejudice and expressly reserve the right to pursue the subject matter of non-elected claims in one or more applications.

Claims 23-24 and 49-51 were inadvertently identified as linking claims in the Office Action. The Examiner confirmed telephonically that the linking claims are 15, 17, 19, 21, 38 and 54.

### **ELECTION OF SPECIES**

The Examiner states that the application contains claims directed to patentably distinct species of the claimed invention and requires applicants to choose one of the 14 proteins listed in claims 5, 7, 25, 27, 37, 42 and 44. Applicant hereby elects the protein VEGF for prosecution on the merits. The claims that recite VEGF include Group IV pending

claim 25 and the withdrawn claims 5, 7, 27, 42, and 44, and the claims that depend on claims 25, 5, 7, 27, 42 and 44.

The Examiner also requires the applicant to choose one of the 6 cell types of claims 13 or 50. Applicant hereby elects stem cells for prosecution on the merits. The claims which recite stem cells include the Group IV claims 13, 14 and the withdrawn claims 50 and 51.

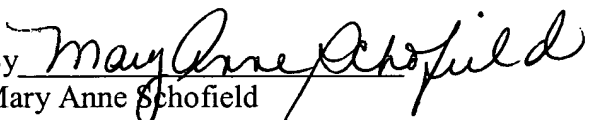
The Examiner further requires applicant to choose one of the 6 promoters listed in claims 30 and 32. Neither of these claims is a member of the elected Group IV claims and therefore, applicants assert that an election of the promoter is not necessary at this time. However, if the Examiner considers that election of a promoter is necessary, applicants hereby elect MHC $\alpha$  promoter but request that the Examiner search the broader category of MHC promoters, which would include MHC $\alpha$  and MHC $\beta$  promoters. Such a search would not impose an undue burden on the Examiner.

The Examiner considers claims 4, 6, 15-24, 26, 28-29, 31, 38, 41, 43 and 49 to be generic. Generic claim 4 is a member of Group I. Generic claim 6 is a member of Groups II and III. Generic claims 15, 17, 19, 21 and 38 are also linking claims. Generic claims 16, 18 and 20 are members of Group II. Generic claims 23 and 24 are members of Groups II, III and IV. Generic claim 26 is a member of Groups II and III. Generic claims 28 and 29 are members of Group I. Generic claim 31 is a member of Group II. Generic claim 41 is a member of Group I. Generic claim 43 is a member of Groups II and III. Generic claim 49 is a member of Group VI.

A check is enclosed herewith for the one-month extension of time fee. However, the Commissioner is hereby authorized to deduct any missing or insufficient fee from deposit account to our Deposit Account No. 06-2375, under Order No. WO-BSX 236 US2 from which the undersigned is authorized to draw.

Dated: June 16, 2005

Respectfully submitted,

By 

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